

<b>TO:</b> Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	<b>REPORT ON THE          FILING OR DETERMINATION OF AN          ACTION REGARDING A PATENT OR          TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court W. D. N. Y. on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. 08-cv-716C	DATE FILED 9/25/08	U.S. DISTRICT COURT Western District of New York
PLAINTIFF Lee Shuknecht & Sons, Inc.		DEFENDANT G. Mortellaro and Sons, Inc. et al.,
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 **SEE ATTACHED	CERTIFIED COPIES OF COMPLAINT AND DOCKET**	
2		
3 5,024,278		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY		
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK 	(BY) DEPUTY CLERK 	DATE 9/25/08
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Copy 1—Upon initiation of action, mail this copy to Director    Copy 3—Upon termination of action, mail this copy to Director  
 Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4—Case file copy

**U.S. DISTRICT COURT**  
**U.S. District Court, Western District of New York (Buffalo)**  
**CIVIL DOCKET FOR CASE #: 1:08-cv-00716-JTC**  
**Internal Use Only**

Lee Shuknecht & Sons, Inc. v. G. Mortellaro and Sons, Inc.  
et al

Assigned to: Hon. John T. Curtin  
Cause: 35:271 Patent Infringement

Date Filed: 09/25/2008  
Jury Demand: Plaintiff  
Nature of Suit: 830 Patent  
Jurisdiction: Federal Question

**Plaintiff**

**Lee Shuknecht & Sons, Inc.**

represented by **Neal L. Slifkin**  
Harris Beach LLP  
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**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

ATTEST: A TRUE COPY  
U.S. DISTRICT COURT, WDNY  
RODNEY C. EARLY, CLERK

By *Rodney C. Early*  
Deputy Clerk

**Teresa Brophy Bair**  
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V.

**Defendant**

**G. Mortellaro and Sons, Inc.**

**Defendant**

**Paul Mortellaro**

**Defendant**

**Matthew J. Mortellaro**

Date Filed	#	Docket Text
09/25/2008	<u>1</u>	COMPLAINT against G. Mortellaro and Sons, Inc., Paul Mortellaro, Matthew J. Mortellaro ( Filing fee \$ 350 receipt number 9486.), filed by Lee Shuknecht & Sons, Inc..(JDK) (Entered: 09/26/2008)
09/25/2008		Clerk mailed certified copy of complaint and docket to Commissioner of Patents and Trademarks (JDK) (Entered: 09/26/2008)
09/25/2008	<u>2</u>	CORPORATE DISCLOSURE STATEMENT by Lee Shuknecht & Sons, Inc.. (JDK) (Entered: 09/26/2008)

U.S. DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

By James D. Kelleher  
Clerk

Original Filed 9-25-08

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

LEE SHUKNECHT & SONS, INC.

Plaintiff,

COMPLAINT

vs.

JURY TRIAL DEMANDED

G. MORTELLARO AND SONS, INC  
PAUL MORTELLARO and  
MATTHEW J MORTELLARO

Defendants.

Civil No.

Plaintiff, Lee Shuknecht & Sons, Inc. ("Plaintiff" or "Shuknecht") for its Complaint against Defendant G. Mortellaro and Sons, Inc., Paul Mortellaro and Matthew I. Mortellaro (collectively "Defendants") alleges as follows:

PRELIMINARY STATEMENT

1. This is an action for infringement of United States Letters Patent No. 5,024,278 (the "'278 Patent"), pursuant to applicable federal patent laws. A copy of the '278 Patents is attached to this Complaint as Exhibit A.
2. Shuknecht is the owner of the '278 Patent.

PARTIES, JURISDICTION & VENUE

3. Plaintiff, Shuknecht, is a New York corporation with its principal place of business at 4458 Ford Road, Elba, New York 14058.

4. Upon information and belief, Defendant, G. Mortellaro and Sons, Inc. ("Mortellaro") is New York corporation having a place of business at 6550 Transit Road, Elba, New York, 14058

5. Upon information and belief, Defendant Paul Mortellaro is an individual having an address of 6610 Log City Rd., Elba, NY 14058.

6. Upon information and belief, Defendant Matthew J. Mortellaro is an individual having an address of 6129 Transit Rd. B, Elba, NY 14058.

7. This action is one for patent infringement arising under the patent laws of the United States, including 35 U.S.C. §§271 and 281 *et seq.*, and more specifically, 35 U.S.C. §§271, 281, 283, 284 and 285.

8. Upon information and belief, Defendant Mortellaro does, or transacts, business in New York and is subject to the personal jurisdiction of this Court.

9. Upon information and belief, Defendant Mortellaro does, or transacts, business in this judicial district.

10. Upon information and belief, Defendant Paul Mortellaro is subject to the personal jurisdiction of this Court and resides in this judicial district.

11. Upon information and belief, Defendant Matthew J. Mortellaro is subject to the personal jurisdiction of this Court and resides in this judicial district.

12. Venue is proper in this District, pursuant to 28 U.S.C. §§1391 and 1400(b).

#### FACTUAL BACKGROUND

13. Upon information and belief, Defendants made, used, and are using patented components of harvesting machines which are covered both literally and equivalently by claims of the '278 Patent.

14. Upon information and belief, Defendants have used, are using and/or have leased harvesting machines which have been modified to include patented components which are covered both literally and equivalently by claims of the '278 Patent. Photographs of these infringing machines are attached as Exhibit B.

#### CAUSE OF ACTION

##### Infringement of U.S. Patent No. 5,024,278

15. Plaintiff repeats and realleges the allegations contained in paragraphs 1-14.

16. Upon information and belief, Defendant Mortellaro has infringed the '278 Patent by making, using, selling and/or leasing harvesting machines with components which are covered by claims of the '278 Patent and/or by inducing others to make, use, sell and/or lease harvesting machines with components which are covered by claims of the '278 Patent.

17. Upon information and belief, Defendant Paul Mortellaro has infringed the '278 Patent by making, using, selling and/or leasing harvesting machines with components which are covered by claims of the '278 Patent and/or by inducing others to make, use, sell and/or lease harvesting machines with components which are covered by claims of the '278 Patent.

18. Upon information and belief, Defendant Matthew Mortellaro has infringed the '278 Patent by making, using, selling and/or leasing harvesting machines with components which are covered by claims of the '278 Patent and/or by inducing others to make, use, sell and/or lease harvesting machines with components which are covered by claims of the '278 Patent.

19. Upon information and belief, such infringement of the '278 Patent by Defendants was done with actual knowledge of the existence of the '278 Patent and the

patented inventions, and is unlawful, deliberate and willful, making this an exceptional case within the meaning of 35 U.S.C. §§284 and 285

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

A. That the Court adjudge United States Patent No. 5,024,278 valid and infringed by Defendants;

B. That Defendants and their agents, servants, employees, attorneys, directors, officers and those in active concert or participation with any of them be preliminarily and permanently enjoined under 35 U.S.C. §283 from further infringement of the '278 Patent;

C. That Defendants be ordered to deliver up to this Court, for such disposition as it sees fit, all infringing products and articles within the possession or control of Defendants, or recallable by Defendants;

D. That Defendants be required to pay damages to Plaintiff for infringement of the '278 Patent as provided under 35 U.S.C. §284;

E. That Defendants be adjudged a willful infringer of the '278 Patent, that this case be declared an exceptional case within the meaning of 35 U.S.C. §§284 and 285, and that Defendants be ordered to pay treble damages to Plaintiff due to the deliberate and willful nature of the infringement of the '278 Patent;

F. That Defendants be required to pay prejudgment and post-judgment interest at the legal rate until such judgment is paid;

G. That Plaintiff be awarded its reasonable attorney's fees and costs in this matter;  
and

H. That Plaintiff be granted such other and further relief as this court deems just.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury of all issues so triable.

Dated this 24th day of September, 2008

HARRIS BEACH PLLC

By s/Neal L. Slifkin

Neal L. Slifkin

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